

# Notice of Allowability

Application No.

09/765,168

Examiner

Scott Beliveau

Applicant(s)

MAZE ET AL

Art Unit

2614

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 15 November 2004.
2. ☒ The allowed claim(s) is/are 13-15 (renumbered as 1-3).
3. ☒ The drawings filed on 15 November 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **EXAMINER'S AMENDMENT**

### ***Drawings***

1. The drawings were received on 15 November 2004. These drawings are approved.

### ***Election/Restrictions***

2. Applicant's election of 13-15 in the reply filed on 15 November 2004 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. This application is in condition for allowance except for the presence of claims 16 to 18 non-elected without traverse. Accordingly, claims 16 to 18 been cancelled.

### ***Examiner's amendment***

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claims 16 – 18 have been cancelled.

### ***Allowable Subject Matter***

5. Claims 13-15 are allowed.

Art Unit: 2614

6. The following is an examiner's statement of reasons for allowance:

The examiner concurs with the applicant that the art of record fails to particularly disclose or suggest the newly amended claim limitation where a "search continues as channel guide information is updated by the receipt of new channel guide information during said search step" effectively allowing the user to establish a ongoing reminder for television programs meeting the search criteria.

As to the art of record, the Hoarty reference generally discloses a method for searching for program guide information of interest wherein the user is operable to be alerted to the presence of other programming at a future date meeting the criteria. While the reference states that it is operable to notify a user as to future events meeting the search criteria, it is unclear if the future notification of other events associated with matching the search criteria necessarily occurs as channel guide information is updated. For example, as shown in Figures 25-26, the user designated recording/reminder for a program on June 24 and subsequently indicates a desire to be notified of other Bogart movies. It is unclear, however, from the disclosure that the user is actually being reminded of any future programs over and beyond those occurring on either June 25 or June 26<sup>th</sup> which were originally retrieved as matching the search criteria such that the search is on-going while program guide data is being updated so as to notify the user of additional occurrences. For example, it is unclear if a user would be notified of additional programs meeting the search criteria beyond June 26<sup>th</sup> without manually re-executing the search. The Ferguson and Yanagihara et al. references, of record, provide evidence that it is known to schedule and/or automatically execute continual searches so as to automatically alert the user as to information of interest. However, the

Art Unit: 2614

particular usage of the automatic alerting in the Ferguson and Yanagihara et al. references is solely taught in relationship to documents (ex. publications, press releases, newspaper articles, etc.). Therefore, the references do not appear to be in the field of applicant's endeavor or reasonably pertinent to the problem with which the applicant was concerned; namely an apparatus for scheduling the selection of a television program for watching or recording as identified in the instant application (IA: Page 1, Lines 9-11). Furthermore, the references provide no teaching or suggestion to apply the non-analogous art to an interactive television distribution system such as that employed by Hoarty.

As to other art of record, it is noted that the Schein et al. reference appears to teach the claimed limitation, however, the earlier filing for which priority is claimed and is needed to antecede the valid priority claim of the instant application does not provide adequate support for the usage of on-going searches. Accordingly, the Schein et al. reference does not qualify as prior art under 35 U.S.C. 102 to be used against the instant application. Similarly, the newly cited, Robarts et al. reference teaches the claimed limitation, but it also does not qualify as prior art under 35 U.S.C. 102 against the instant application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

Art Unit: 2614


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB  
March 16, 2005

  
JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600